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June 6, 2025

Ms. Molly Dwyer
Clerk of the Court
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103-1526

Re: No. 23-4132, *United States v. Daniel Matthew Kittson*
Oral Argument – June 12, 2025 (Portland, Oregon)
Government's 28(j) Letter

Dear Ms. Dwyer:

The citations herein relate to the government's argument that 18 U.S.C. § 922(o)(2)(A) does not exempt machinegun transfers made to unknown undercover agents. *See* Gov't Ans. Br. at 12–18.

Involving convictions under 26 U.S.C. §§ 5861(d), (e) where defendants possessed, transferred, or aided the transfer of machineguns to undercover agents pre-1986:

- *United States v. Tarr*, 589 F.2d 55, 61 (1st Cir. 1978) (transfer);
- *United States v. Dwyer*, 539 F.2d 924, 925 (2d Cir. 1976) (sold);
- *United States v. Crossman*, 663 F.2d 607, 609 (5th Cir. 1981) (negotiated purchase);

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- *United States v. Pingleton*, 458 F.2d 722, 723 (7th Cir. 1972) (transfer);
- *United States v. Johnson*, 562 F.2d 515, 517 (8th Cir. 1977) (participated in sale);
- *United States v. Gillis*, 474 F.2d 4, 5 (9th Cir. 1973) (sold);
- *United States v. Rogers*, 652 F.2d 972, 973 (10th Cir. 1981) (aided transfer);
- *United States v. Sorrells*, 714 F.2d 1522, 1530 (11th Cir. 1983) (aided transfer).

Relating to federal registration requirements for machineguns:

- *United States v. Gillis*, *supra* (tax exemption did not apply to transfer made to an unknown undercover agent because the transferor did not comply with registration requirements);
- *United States v. Khatib*, 706 F.2d 213, 216 (7th Cir. 1983) (no defense to receiving unregistered silencers that the transferor turned out to be undercover agent who was not required to register it);
- *United States v. Freed*, 401 U.S. 601, 607 (1971) (describing requirements for lawful transfer);
- 26 U.S.C. §§ 5811, 5812 (1985) (\$200 tax and transfer procedures);
- 26 U.S.C. §§ 5852(a), 5853(a) (1985) (tax exemption for firearm transfer to government);
- 26 U.S.C. § 5852(f) (1985) (requirement that tax-exempt transfer comply with regulations);
- 26 C.F.R. § 179.89 (tax-exempt transfer to government must follow procedures);

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- 26 C.F.R. § 179.90 (transferor must know exempt status of the transferee).

Relating to the constitutionality of § 922(o) under the Commerce Clause:

- *United States v. Rambo*, 74 F.3d 948, 951–52 (9th Cir. 1996) (citing *United States v. Wilks*, 58 F.3d 1518 (10th Cir. 1995));
- *Wilks, supra* at 1521–22 (10th Cir. 1995) (considering § 922(o) within the historical development of federal firearms legislation).

Sincerely,

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District of Oregon

s/Sarah Barr
SARAH BARR
Assistant United States Attorney

cc: Michael Benson, Attorney for Defendant-Appellant